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Supreme Court, U.S.
FILED
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No. (1)

In The

Supreme Court of the United States

George Scheib and
Carole L. Scheib
Petitioner(s)

Mellon Bank, N.A.
Reed J. Davis, Sr.
Respondent(s)

On Petition For Writ of Certiorari To The Third Circuit Court of Appeals of Philadelphia, PA

PETITION FOR EXTRAORDINARY WRIT OF CERTIORARI

Carole L. Scheib, *Pro-se* *815* Walbridge Street
(412) 875-2439 or (412) 923-3350 Pgh. Pa. 15220

Questions Presented For Extraordinary Writs In The Nature of Mandamus

1) Did the Third Circuit Court owe a specific duty to view the Appeal upon accepting a $455.00 Filing Fee?

2). Did Jurisdiction belong in the Federal Court based upon Federal Rule Violations, by a National Bank, Under Truth-in-Lending?

3). Did the Federal Court err in their denial based upon the preponderance of accurate evidence that was submitted?

4) Is 'the Bank' liable for the Injury (Cause) by their Mistakes, fraudulent action, OR is the Allegheny County Sheriff Department, OR is The State Court liable for granting the Original Foreclosure action yet; had NO Authority to initiate an unlawful foreclosure And or does the (Cause) revert back to the U.S Trustee who did Fail to Protect Petitioners'.

(4) Question- Continued

11 U.S.C.A. 8, 321 et. seq. 704, 28 U.S.C.A 581. And U.F.T.A. and PA FUTA and Under 548 (a) (2) of the Bankruptcy Code.

5) Where IS the REMEDY that Petitioners' Seek???

List of Parties

Petitioners', George Scheib and Carole Scheib
815 Walbridge Street, Pittsburgh,
Pa. 15220
(412) 875-2439 or (412) 923-3350

Respondents', Mellon Bank, N.A.
Legal Division,
500 Grant Street, Pittsburgh, Pa.
15219
Reed J. Davis, Sr. of Davis-Davis Law Firm,
located at Davis Building, 393 Vanadium Road,
Pittsburgh, Pa. 15243
Counsel of Record for both, Reed Smith LLP
435 Sixth Avenue, Pittsburgh, PA. 15219
(412) 288-3131

The United States, nor any Federal, State and Or County Office, Agency, Officer or Employee Is a Party.

The Constitutionality of an Act of Congress is Drawn into question. Under 28 U.S.C. s 2403 (a) And the Constitutionality of any Statute of a State Is drawn into question, Under 28 U.S.C. s 2403 (b) May apply and is served on this day, May 6, 2008.

Each of the following Agencies were served via Certified Mail and with a Return Receipt.

Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave. N.W. Washington, D.C. 20530.

Attorney General of the State of (Pa.) to the Civil Process Clerk at U.S. Attorneys' Office, 700 Grant Street, Pgh. Pa. 15219

And the Office of Attorney General of U.S. at Department of Justice, 10th & Constitution, N.W. Washington, D.C. 20530.

Corporate Disclosure Statement

Of Respondent, Mellon Bank, N.A; merged with Bank of New York, now; Bank of New York Mellon. Most of the statement is directly from the disclosure statement by Attorney J. Butcher of Reed Smith, LLP., dated on January 30, 2007. Some Information is from the Internet., and is Submitted to the best of Petitioners' knowledge.

Mellon Financial Corporation

Mellon Funding Corporation

Mellon Capital I

Mellon Capital II

Mellon Capitol III (as Corporate Parent)

Mellon Bank, N.A. (MBSC, LLC)

Mellon Insurance Agency, Inc.

Mellon Trust of Delaware, N.A.

Mellon Trust of New England, N.A,

Boston Safe Deposit Finance Company, Inc.

Mellon Private Trust Company, N.A.

Mellon Trust of California

Mellon Trust of New York, LLC.

Mellon Trust of Washington

Corporate Disclosure Statement
(continued)

Mellon Life Insurance Company
Mellon Financial Markets, LLC.
Dreyfus Service Corporation
Dreyfus Service Organization, Inc.
Dreyfus Family of Mutual Funds
Dreyfus Founders Funds
Founders Asset Management LLC
Mellon Funds Trust
The General Family of Mutual Funds
Mellon Optima L/S Strategy Fund, LLC
Boston Safe Advisors, Inc.

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Statement of the Case

George Scheib and Carole L. Scheib are the 'Petitioners'; Mellon Bank, N.A. and Reed J. Davis Sr., hereinafter; 'the Bank'. Please accept the enclosed Petition as a Timely Appeal from the Third Circuit Court of Philadelphia, PA. 07-3435, Denial is dated December 7, 2007. Prior from the Federal Court of Western Pa. At 07-0018.

Jurisdiction within this Court Under

'The Judicial Power of the United States shall be vested In One Supreme Court...the Judicial Power shall extend to ALL Cases, in Law and Equity, Arising Under this Constitution...Article III.

For cases from Federal Courts: a timely Petition for Re-Hearing was denied by the United States Court of Appeals. The Order denying Re-Hearing Appears at Appendix A.

Decision of Third Circuit Court of Philadelphia, Pa. Appears at Appendix B.

Order of Denial of Re-Consideration of the Federal Court of Western Pa. Appears at Appendix C.

Order of the Federal Court Appears at Appendix D and Memorandum Opinion and Order Appear at Appendix E-1 through E- 17.

Basis for Jurisdiction

By Petition for an Extraordinary Writ of Certiorari filed by George Scheib and his wife; Carole L. Scheib, *pro-se;* hereinafter, 'Petitioners' from case 07-0018 that has been decided in the Federal Court of Western Pa. (no) Hearing, (no) Discovery, nor any Pre-meeting held. Case was dismissed with Prejudice. Petitioners' filed (2) Motions to Re-Consider to avoid an Appeal. Upon denial, Petitioners' filed an appeal to the Third Circuit Court of Philadelphia, PA.07-3435 Denied in the Court of Appeals on December 7, 2007., Petitioners' filed timely in the U.S, Supreme Court March 4, 2008 with (60) days to correct Petition errors due by May 9,08

History of the Case

The Original case(s) were Mellon Bank, N.A. as Plaintiff and the Petitioners' were Defendants', #98-16457 in foreclosure action #99-16433 a new suit of a Special and/or Permanent Injunction to keep the Scheibs'/Petitioners' from any interference in 'the Banks' attempt(s) to sell the home, and yet; Petitioners' own the adjoining

property, and the only activity that the Petitioners' actually did was to keep the claims alive in litigation through mainly Appeals., which is the Petitioners' only legal recourse. Petitioner, Carole Scheib, as sole Petitioner did file GD-02-5151 in 'State Court'., Under New Issues and New Matter Pa. Rules 1051:4 and 1051:5 in Ejectment. Under Rule 1030 governs the raising of Affirmative defenses as New Matter. Please see Goodrich Amron 2d Procedure Rules and Under Rule 1017 established rules applying to actions of Ejectment are permitted. Claims in Fraud, Trespassing, Breach of a Fiduciary duty and Misrepresentation, attempting to prove the over-payments effect on the small Mortgage balance.

Petitioners' are Filing due to the Dismissal of case. Petitioners' did timely file Motions within a matter of days, submitted with reasonable diligence. The dates' were June 22, July 9th and again on July 27, 2007, the date of the last denial Order was signed on July 31, 2007. All within the Federal Court of Western Pa. Petitioners' filed the Notice of Appeal with the

filing fee on August 14, 2007.,within 30 days (actually 14 days) of the final denial in the Federal Court of Western Pa., and after reading that 'Regional U.S. Courts of Appeals.. created by Congress in 1891 (Evarts Act) Twelve regional Circuits...each **Court decides questions of Law After reading briefs and Hearing oral Argument.,** 'This Court erred in NOT viewing the case with the New evidence and certainly NOT hearing Oral Argument. Combined with the fact that any final decision was still pending in the Federal Court as to the denial of the third and Final Motion to Re-Consider, until July 31, 2007., and that Filing in the Third Circuit Court was Timely. This case is related to GD-02-5152 in the Court of Common Pleas, hereinafter; any reference to that case in Equity will be 'State Court'.

Reasons for Granting Extraordinary Writs

I.

Extraordinary Writs will aid this Courts' Appellate Jurisdiction.

II.

Exceptional circumstances warrant the exercise

Of this Courts' discretionary Powers and Supervisory Responsibilities.

III.

Adequate relief cannot presently be obtained in any other form, or from any other Court. Petitioner now elaborates in detail as follows: the Writs will be in aid of this Courts' Appellate Jurisdiction.

1. Listed within the Writs are Established Rules, Regulations and Laws that were ignored by 'the Bank'. Home foreclosures increased 75% in 2007. The instant case should set Precedence as an example and to help avoid this type of arrogant behavior in the near future.

Exceptional circumstances warrant the exercise **of this Courts' discretionary Powers and** supervisory responsibilities.

2. Petitioners' have been diligent approaching the Courts' and submitting every receipt and document requested. ALL State Appeals have been EXHAUSTED due to the extreme Violation of the Civil Rights and Civil Liberties of the Petitioners' by 'barring' Petitioners' from any Filing in 'State

Court'. Yet, ***'the Right to file a Lawsuit Pro-se Is one of the Most Important Rights Under The Constitution and Laws.'*** These Rights are guaranteed by Section 11 that all Courts shall be **Open.**, and every man for an injury done him in his Lands, goods, Person or reputation shall have Remedy by due course of Law and Right, and Justice administered without sale, denial or delay. *Suits may be brought against the Commonwealth of Pennsylvania.* *Jenkins v. McKeithen, 395, U.S. 411, 421 (1959) Picking v. Pa. R. Co., 151 Fed 2d. 240 Pucket v. Cox, 456 2nd 233.* In such manner, in such Courts and in such Cases as the Legislature may by Law Direct. **[In case a person is deprived of Liberty by a Process that conflicts with some Provision of the Constitution. Then the Due Process Clause normally prescribes the 'remedy' Restoration** of that Persons' Liberty. The Supreme Court held in 1967 that, "we cannot leave to the States the formulation of the Authoritative Remedies designed to protect people from Infractions by the States of Federally Guaranteed Rights,"

III

Adequate Relief cannot presently be obtained in any other form, or from any other Court. Petitioners' are Natural born U.S. Law- abiding Citizens with Inherent and Inalienable Rights Guaranteed by the Constitution, Laws and Treaties of the U.S. with NO other recourse of Remedy to this 'ongoing' dispute. Under Article III, this Supreme Court has the Power and the Duty to Order Proper Relief.

Constitutional and Statutory Provisions

In Pennsylvania, Petitioners'/Plaintiffs' must fully believe and be convinced that they had a Full and a Fair Trial. 2) Petitioners' **never** had A Trial by Jury, a Violation of the Seventh Amendment of the U.S. Constitution. 3) Violations of the Fourteenth and the Fifth Amendments of the Constitution. [*'No State shall..deprive any Person of Life, Liberty or Property; without Due Process of Law'*]. *Article 823 Property and the* Right of Inheritance are Guaranteed, their Content and Limits shall be determined by Law. Article 14. *Civil Liberties and Civil Rights Act, 42 U.S.C.

s 1983, as Violation to Ones' Individual Constitutional Rights.

*Under UFTA and Pa. FUTA, as well as Under s 548 (a) (2) of the Bankruptcy Code, a transfer for Security is ordinarily for reasonably equivalent value notwithstanding a discrepancy between the value of the Asset transferred and the debt secured.(Since the debtor remains entitled to any equity in the property).Petitioners' were also denied the 'homestead exemption entitled to'. '[*The Property which thus stands before us for Adjudication thus appears to have been brought Within the Jurisdiction of this Court in Disobedience and in Violation of the process of a Court of a sister state and in Fraudulent Violation Of the process of a Court of a sister State and In Fraudulent Violation of the Rights of Property of Its Real Owners."] Precendence: U.S. Supreme Court, Gumbel v. Pitkin 124, U.S. 131 (1888).*

Petitioners' are further harmed by the fundamental 'unfairness' of the local power of this huge Corporation. In the strict legal sense,[Property] Aggregate of Rights which are guaranteed and Protected by the Government.

Blacks' Law Dictionary, 5th Edition, 1979. and Under the Constitution..Losing parties may Appeal ALL Adverse Rulings to which they objected.

Detailed Discussion Petitioners' Respectfully Request Extraordinary Writs of Mandamus.

To compel the performance of Specific duties owed to Petitioners'. Also Petitioners' have been diligent abiding by every Rule and Law; yet, 'the Bank failed to respond to Rule 8 within the Federal Court Pertaining to ...admit or deny the Claims against them. Rather, 'the Banks' legal Defense Team does degrade the Filings submitted by the Petitioners' and that they are unable to answer. 'the Bank is guilty by their Silence....'*[Pleadings are intended to serve as a means of arriving at fair and Just settlements of controversies between litigants. They should not raise Barriers which prevent the achievement of that end. Proper pleading is important, but its Importance consists in its effectiveness as a means to accomplish the end of a Just Judgment." Held in Supreme Court Sedima..S.P.R. 1 Imprex Co. 473 US.479 (1985)*

Petitioners' have come forth with 'clean hands'., knowing and 'learning' full well the negativity in being Pro-se...however; simply cannot afford to give another huge retainer to an Attorney who most likely will misrepresent or not 'appear' and or charge thousands of dollars to promise to 'read' a few documents. Actually, Petitioners' would have missed every deadline to file an appeal by merely waiting for an Attorney to return a call. The American Bar Association in Pittsburgh, Pa., openly stated that they would Not even Refer an Attorney to Petitioners'. Nonetheless; combined with the Truth, all of the Proof, Evidence and a sheer persistence to regain some Faith into the Judicial system, considering that this is still 'America'. Petitioners do understand the impact on the Public which is one reason that the Media was not informed, thus; any Resolution could be unpublished and sealed.

Petitioners' aren't asking for New Laws, but for 'the Bank' to follow the established Laws and Regulations, being a National Bank that should

abide by certain Rules of the Comptroller of the Currency,(O.C.C.) will not intervene since this is in litigation., and from day 1, this Agency stated by letter, that this is a" Clearly civil dispute and that it does belong in the Court system.

In a much later conversation, the O.C.C. stated, that 'they never heard of such a long, ongoing and unresolved Complaint as this.' Instead of a reasonable solution, 'the Bank' retains the city's largest, most expensive Law Firm; rather than to admit their many errors in this case.

Petitioners' could not even obtain a full, true Mortgage History from 'the Bank', without a Court Order for one, and then it was riddled with mistakes and lacking 13 years out of over a 20+ year period. The ONLY Recourse and Remedy IS within this Court., ALL other Options are exhausted., including being dismissed from Federal Court of Western Pa. with Prejudice.

*This is a Consumer Protection Issue, this type of arrogant behavior will only Increase since the Real Estate Market changed recently.

*Petitioners' had a typical, straight 30Yr.Mortgage

at 9%, with 35% down, paying $38,900.00 with $15,000.00down,borrowing $23,900.00.The Property Taxes were steady at $150.00 monthly or $1,800.00. The affordable mortgage was about $299.00., until 1992, after making payments since the initiation of the mortgage in July of 1978, it was 'the Bank' that increased the Mortgage amount to $496.00 monthly, Petitioners' over-paid for several years including paying One full year of payments over $600.00 +monthly (double).The over-payments were paid for so long, that it was though it was the normal payment (299.00) No Mortgage Insurance (PMI) was required due to the large down payment. The Mortgage was increased due to a 'supposed' shortage','the Bank' blamed the large increase on a Homeowners' Insurance, calling it a 'Force-placed and or Hazard Insurance.

- With the information available today; via the Internet., it is currently well known to the public of the Impact of over-payments, by 'the Banks' own example, a mere $22.00, if paid extra monthly, that would pay off over $7,000.00, yet; in this case an over-payment of nearly 200.00

month is almost TEN Times the amount of 'the Banks' example.

*The receipts of every over-payment was accepted into the Pre-Discovery stage in the 'State Court'. All of the documents Filed, timely were submitted into that Court, by: Court Order., the Court then, reluctantly scheduled the Hearing based upon all of the evidence. No Attorney and or Representative from 'the Bank' appeared at the Pre-Hearing Conference. Certainly, even the brief ONE day Bench Hearing would NOT have been scheduled without the clear evidence of the receipts. Petitioner submitted every receipt and statement for Homeowners' Insurance which was paid AND deducted from the mortgage servicing as well., an additional huge error was that 'the Bank' charged for FOUR properties instead of ONE.

- Through correspondence from 'the Bank' it states...'it is the Banks' **Policy** to have an appraisal of their 'taken' properties.,IF (mortgagor) cares to pay the appraised Value, and (not) the assessed value. Yet, it is illegal for any Bank to make a 'profit' on any foreclosed real estate.

Federal Statutes and Regulations

* Home Mortgage Disclosure Act (HMDA) 12 2801 -2810 Regulation C, 12 F.R. Part 203.
* Home Equity Loan Consumer Protection Act,15
* Violations of Section 10 (b) of the Securities Act (SEC) and Rule 10 b-5
* False submissions reported to the Internal Revenue Service and on a (1099) form affecting Petitioners' Income Tax Debt.
* Under Banking Law, Title 10, Chapter 46.2, Improper conduct of Lending and brokering in the Mortgage Loan Business.
* Violations of UDAP and UFTA, and 548 (a) (2) of the Bankruptcy Code. 11 U.S.C.A. 8, 321 et. seq. 704, 28 U.S.C.A. s 581. U.S.C.S. 1601-1667 e, the Federal Fair Debt Collection Practices,15 U.S. c.s. 1691 e (11).
* Full Faith and Credit Statute 28 U.S.C. s 1738.
* Tampering and Theft of Petitioners' U.S. Mails through (ERA) Realtor. Section 18 1708.
* Home Ownership and Equity Protection Act. (HOEPA) 15, U.S.C. Sec. 1639.

*Federal Trade Commission Act 15 U.S.C.

*Under WAC 208-660-006 Unfair and or deceptive Acts or Practices, Under the Federal Trade Commission.

*Consumer Fraud, Consumer Protection Act and the Fair Debt Collection Practices Act, 63 P.S. s 456-101- 456.31

Pennsylvania Statutes and Violations

Section 1 All Courts shall be Open #6, Section 407 of Act #6 of 1974, 41 P.S. s 407 Loan Interest and Protection Law, P.L.13, No. 6, 69

12 U.S.C. s 1813, (p) 1817 (i) C.F.R. 12 330.10 a.

*Pa. State Law Rules 71:265, 71:280, 71:281, 71:282, and 71:292 Rules in Eviction.

*Rule 672 Punitive damages

*Rule 1019 Fraud, Malice, Intent and knowledge.

*Rule 1028 Failure to conform to established law and Rules of the Court.

*Rule 1028A Scandalous

*Rule 1051 Pleading more than one cause of action.

*Rules 1051:4 and 1051:5, one could come forth with New Issues in an Ejectment suit.

*Rule 1055 to Compel adverse party to surrender Property to Admit the Invalidity and Nonconformance.

*Rule 1028 Failure to Conform to established Law and Rules of the Court.

*Rule 4011 Unreasonable Bad Faith

*Rule 5104 Fraudulent Transfer

*Rule 412 Postponement: Property was sold to Mr. Reed Davis, Sr. for 'the Bank'., untimely, unlawfully and Unannounced on October 9th, by announcement at the regular monthly sale., on October 5th, the first Monday property could not be sold due to Rule 31/29., however; a Federal Court Order was ignored pertaining to a postponement of any sale to December, since co-owner, George Scheib was Under the 'protection' of a brief Bankruptcy protection., sold for costs only by, Mr. Davis, for $2,372.17. 'the Bank' than initiated an Ejectment suit in

October, several weeks prior to 'the Bank' even having a 'Sheriff deed'., not until November 23rd.

*the Bank' ignored the 'Right of Redemption' in Pennsylvania, by refusing a cashiers' check for $7,000.00 More than the alleged mortgage balance.

*National Banking Act, 12 U.S.C. s 85-86, and Section 521, of the Depository Institution.

*Deregulation and Monetary Control Act (DIDA) 12 U.S.C. s 1831 d.

*41 Pa. Constitution Stat. s 101 et. seq. and the Unfair Trade Practice and Consumer Protection Law, 73.

Pa. Cons. Stat. s 201-1

Truth-In-Lending Act

*Truth-In-Lending Act was passed to prevent a unsophisticated Consumer from being misled as to total cost of financing, truth in financing. Section 1601.

Griggs v. Provident Consumer Discount, 680 F. 2 d. 927, certiorari granted, vacated 103 S.Ct. 400, 459 U.S. 56, 74 L.Ed. 225, on remand 699 F.2d 642

*Truth-In-Lending Act is strictly liability, statute liberally construed in Favor of Consumers.

Section 102 et. seq. 15 U.S.C. Section 1601.

Brophv. v. Chase Manhattan Mortgage Co., 947 F. Supp. 879.

*Truth-In-Lending Act must be strictly construed and Liability Imposed for Any Violation, no matter how technical.

*Truth-In-Lending Act Section 102, et. seq. as amended, 15 U.S.C. Section 1601 et. seq.

Abele v. Mid-Penn Consumer Discount. 77 B.R. 460 affirmed s 45 F.2d 1009.

*Requirements of Truth-In-Lending Act are highly technical, but full Compliance is required even Minor Violations **cannot** be ignored.

Section et. seq. as amended, 15 U.S.C. Foil. Section 1700.

Griggs v. Providence Consumer Discount Co. 503 F. Supp. 246, appeal dismissed 672 F.2d 903, appeal after remand, 680 F.2d 927, Certiorari granted, vacated 103 S. Ct., 400, 459 U.S. 56, 74 L.Ed. 2d 225, on remand 699 F 2d 642.

*Any Violation of the Truth-In-Lending Act, regardless of technical nature; must result in finding of Liability against Lender. Regulation Z, Section 226.1 et. seq., 15 U.S.C. Section 1700 Section 130 (a,e,).

In:Re Steinbrecher, 110 B.R. 155, 116 A.L.R. Fed 881.

*If a Lender is convicted of (TILA) Violations, they may Lose their Federal Reserve Charter.

*Where Lenders' disclosures are confusing, misleading and inaccurate; character of disputed disclosure is so clear that it can not reasonably be disputed, Summary Judgment for Plaintiff is appropriate. Section 102 et. seq. Truth-In-Lending Regs. Regulation Z, Section 226.1 et.seq. 15 U.S.C. Section 1700.

*Pursuant to Regulations promulgated Under Truth-In-Lending Act. Violator of disclosure requirements is held to standard of strict Liability, and therefore; Borrower need not show that Creditor in fact deceived borrower by making substandard disclosures. Section 102-186,

as amended, 15 U.S.C. Section 1601-1667 (e); TILA, Reg.Z, Section 226, 8 (b-d), 15 U.S.C. Section 1700.

*Once a Creditor Violates the TILA Act, No matter how technical the violation appears, unless one of the statutory defenses applies, Court has No discretion in Imposing Liability Truth-In-Lending Act.

Soils v. Fidelity Consumer Discount Co., 58 B.R 983.

["It is not necessary for recession of a Contract that the party making the misrepresentation should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be Unjust to allow one who made false representations, even innocently, to retain the fruits of a bargain induced by such representations."]

Whipp v. Iverson, 43 Wis. 2d 166.

All sections of the Truth-In-Lending Act listed within were found on the Internet at com/mtgdebtsolution [4] html.

*Unfair Trade Practices

*Under FDIC Law, at 343.30

*Under FTC Act, Section 5, Federal Trade Commission, 15 U.S.C. 41-58. U.S.C. 45, which prohibits Unfair or deceptive acts or practices.

*Under Rebert 8.4. RPC ODC State (Pa.) Supreme Court.

Argument

This is a case against a National Bank who Did ignore written requests, prior to the hasty Eviction, regarding the over-payments that were Paid through the previous years. 'the Bank' also Failed to believe certain other important issues Including the fact that the driveway to the rear Of the house is a separate piece of property, 'the Bank' and after a survey realized that it is a 47' house on a 50' Lot.

After several Appeals to the Original Case, Petitioner, Carole Scheib; solely., did file a Claim In 2002, being GD-02-5152, within the Court of Common Pleas of Allegheny County, Pittsburgh, Pa. 15219. Petitioners' will refer to as 'State Court'. Nearly two years later, a one day bench Hearing was held that could Not be regarded as Either a 'Full' nor a 'Fair' Hearing. This was the Ultimate Abuse of Due Process, the Court did err In coming to a decision without Hearing all of The facts..it was made abruptly Contrary to the Law and to the Evidence submitted.

Prejudicial error, Erkskine v. Upham 56 Cal. App.

2d 235, 132 P.2d, 219, 218 Constitutional Right to be **heard** and denied the Basic Rights of Liberty Justice and Equality in a Court of Law, as the First Amendment.

➢ During the one day Bench Hearing, the Banks' Legal Defense Team did present their #29 Exhibit which was a legal size envelope clearly marked, showing.. 'Return to sender'., and for whatever reason, Petitioners' **never** did receive nor ever saw the enclosures prior., which was an Act #6 document.

➢ Under (Pa.) State Rule of Section 407 of Act #6 of 1974, 41 P.S. s 403, known as the Loan Interest and Protection Law. It mandates that Written notice of Intention to foreclose **must** be Given by the Mortgagee to the Mortgagor.,**prior** To the formal filing of **any** complaint in Mortgage Foreclosure., **before** any residential mortgage Lender may **accelerate** the Maturity of any Residential Mortgage debtor. Notice of such Intention at least (30) days in advance as provided In this section.

➢ In a separate letter, an Act #91 is application

Petitioners' did receive an Act #91 and did apply But, was denied assistance., however; Petitioners' Applied for a much higher **alleged** balance debt A figure given by 'the Bank'., that was not Accurate., due to the over-payments made.

➢ During the 'State Court' bench Hearing, 'the Bank' did produce a **fabricated** accounting of the mortgage and Servicing account, **after** the Petitioners' did produce and submit every receipt of the over-payments. 'the Banks' witness a (professional), and Vice President in charge of 'the Banks' real estate re-possessions., and did respond to the question and is on the transcript 'the Bank' admitted that, "yes, they did receive a lot of the information from Mrs. Scheib"., **Prior** to completing the mortgage history.

➢ 'the Banks' Legal Team did state a false statement to the Court., claiming that Petitioners' were behind on a $496.00 payment though the payment was only $299.00 monthly.

➢ 'the Bank did sell all of their residential mortgages within a month or two after this 'hasty' Eviction.

➢ The 'State Court' did **err** by reverting Back to a 'walk-in-type' of Hearing #98-16457 'the Bank' was than the Plaintiffs'. 'State Court did sign the Order using Collateral Estoppel doctrine as 'the Banks' defense. However; why did Petitioners' have to produce all of the evidence, documents requested (by the Court)., and endure a Hearing for 'State Court', to then use a Collateral Estoppel defense?

➢ The 'State Court' did decide the case Improvidently, it was lacking foresight relating To a Judgment, arrived at by using **misleading** Information and **not** actually litigated; it was in Plain error.

➢ The Court did obstruct Justice by Assisting 'the Banks' Defense Team by handing Their Attorneys the doctrine of **recoupment**, for A 'defense', Petitioner was able to request and to Obtain a copy of the same document, was unable To give an answer or response in the mere 20 Minutes that Petitioner was given as a *Pro-se*, Claimant and without any legal book particularly The large Law Dictionary. The State Court agreed

with their 'defense'. However Under **recoupment** it reads...Right of the Defendant to have a **deduction** from the amount of the Plaintiffs' damages for the reason that the Plaintiff has not complied with the cross-obligations arising under the same contract. (Blacks' Law Dictionary). But, it was 'the Bank' who changed the coupon amount as the amount to pay. **Recoupment** is to be a **reduction** of the Claim (damages).,**not** to be **zero**.

➢ During the one day 'State Court' Bench Hearing, the Court did err further in refusing to Allow Petitioner to briefly show even high-lighted Portions of some of the exhibits. The Judgment Should not be Conclusive since these Issues raised Were **not** actually litigated and their was **No** Legal Basis for the Verdict. That is **true** in **All** Courts., in this Case.

'In 1934 the United States Supreme Court held that Due Process is Violated...If a Practice or Rule Offends some Principle of Justice so rooted In the traditions and conscience of our People as To be ranked as fundamental.."

➢ The State and the Federal Court erred

In not giving substantial weight to the amount of And the accuracy of the Evidence submitted by Petitioners' who are typical, Consumers, common And 'unsophisticated', 'the Banks' **knowing** Participation in a transaction that violates C.F.R. S 433.1 et. seq. constitutes an Unfair or deceptive Act or Practice within the meaning of Pa. Unfair Trade Practices and Consumer Protection Act. The Act incorporates as an Unfair Trade Practice, Conduct described by the Federal Trade Commission As creating a likelihood of Confusion or **mistake**. *Iron and Glass Bank v. Franz 9d & c. 3d 419, (1979).* Loan transaction was so pervaded with **error** from Borrowers who are 'unsophisticated' and Under represented by **anyone**.

In re Jungkurth Bkrtcy. E.D.Pa. 1987, 74 B.R. 323

The test of whether or not a statement or a Representation is deceptive is **not** whether it may Literally or technically be construed so as **not** To constitute a Misrepresentation but, rather is Based on the **net** impression it is likely to make On a person of **average** intelligence.

Com. v. Foster, 57 d. & c. 2d 203, 120 P.L.J. 265, (1984).

➢ Petitioners' were baffled, regarding the Actual balance?? Petitioners' paid own Insurance (Homeowners'). The Truth-In-Lending Act should be construed liberally to ensure achievement of goal of aiding sophisticated Consumers so that Consumers are not easily misled as to the total Costs of financing.

1700 Basile v. H & R. Block. Jlt (L. 897 F. Supp. 194).

The original case was the **opposite** of the Case In the Federal Court of Western Pa. And it was **First** case filed by co-Petitioner, George Scheib and the **second** case filed by Carole Scheib, the Filing in the "State Court' (in equity) was the **First** time that Petitioner (solely) sought **damages** As the **first** Claim **after** the unlawful eviction. Petitioner attempted every legal avenue to halt A cruel eviction.

➢ The 'State Court' did **err** in assigning This case to the same Judge who denied giving 'the Bank' an Order to give Petitioners' a **full**

Mortgage History. It was 'the Bank' who claimed Different amounts. One emergency Hearing to Ascertain the amount due was one day before The Eviction.

Mortgagor is entitled to an Accounting from Mortgagee who has taken Possession. Landau v. Western P. National Bank, Supra Winthrop v. Arthur W. Binns., Inc. 160 Pa. Super. 214, 50 A. 2d 718 (1947).

Petitioners' hold a Certified, notarized in Pittsburgh, Pa., and also from Mellon Mortgage in CO.

➢ Also, a Satisfaction piece, clearly Marked Paid in full. Directly after the eviction, The issues of over-payments was reported to the Pa. Department of Banking, the agent stated that 'the Bank' had (30) days to respond, with a letter from Mellon Mortgage Co., in Colorado., and a telephone call from their Liaison, (Dawn DeLeon) who stated that "this is all in the lap of Mellon in Pittsburgh...because they did it." During that same time, an ERA Realtor was intercepting and actually (asked the carrier) for

Petitioners ' mails this was admitted by the carrier (who was new) and reported as well; to the U.S. Postal Services.

➢ The Residential Mortgage Lender, 'the Bank was Liable Under Pa. Law by unlawfully gaining entry to the Debtors' home, following the (alleged) debt or default, by hiring a Locksmith to disassemble the lock and to change them; which was undertaken without Petitioners' Permission, which resulted in a 'Breach of Peace'. 191.207. Petitioners' were not even present to receive any Legal papers.. But, were 'ironically' attempting to Pay 'the Bank' $7,000.00 **more** than the **alleged** Balance with certified funds.

➢ State Court did Order that the Petitioners' must have any Filings signed by an Attorney., To enforce such an UnConstitutional Ruling upon these private citizens who are in Financial hardship, is 'equivalent' to **barring** the Petitioners' from the Court.

➢ State Court had varied opinions Regarding the Filings of Petitioner. Administrative And the President Judge are exceptional Judges.

Collateral Attack, Claim Preclusion Res *Judicata and Collateral Estoppel

*According to Pennsylvania Law One could come forth..with **one** new Issue, in this Case..'the Bank' made every error in the Book. In the Original case there were (12) **new** issues.

*The case that the 'State Court' reverted to was merely an attempt and request to Order 'the Bank' for a full History of the Mortgage., the **only** Question the Court asked..."How much of **an over** Payment?," response was honestly "Over $10,000.00" Not knowing or having the receipts since they were In 240 bags of storage..the **over** payments actually Totaled over $10,000.00.The balance of the **normal** Mortgage, after 20+ years of regular payments).Yet, the Court did **refuse** to grant such an Order.
*The 'State Court' did **err** in reverting back to GD-98-16457 and on the Order from the **One** day Bench Hearing at GD-02-5152 'For all Defendants and against Plaintiff the case 'controlled by the Law of Collateral Estoppel in the case of the Mortgage foreclosure by Mellon Bank, N.A. v. Plaintiff at 98-16457. By the Court

*The Party, ('the Bank') asserting Collateral Estoppel has the burden to show from the Record of the prior action that the asserted Issue was previously litigated and determined. *Vella v. Hudgins (1977) 20 Cal. 3d 251, 257-58*
In Order for a **Second** Suit to be **dismissed** On a Motion of Res Judicata in an **civilian** Jurisdiction, the Trial **must** be **identical** to The **first** trial. Courts have required the Presence of four factors before Collateral Estoppel may be applied: (1) Identical Issue Was previously litigated; (2) the Issue was **Actually** litigated. (3) the previous Determination was necessary to the decision; And (4) the Party being precluded from Relitigating the Issue was **fully** represented In the Prior Action.

(1) not identical but, was Opposite Issue.

(2) Issue of over-payments was **not** Litigated.

(3) previous determination was necessary to the decision...*no* Mortgage History.

(4) was Party fully represented....*no*.

In United Industrial v. Government of the Virgin Islands, 987 F. 2d 162, 169 (3d Cir. 1993).

*By then, after three Attorneys and three large retainers, Petitioner was and Is **pro-se**; incredibly, the last Attorney retained signed a settlement agreement (an Injunction to keep Petitioners' away from the property., and he Didn't even inform Petitioners'., though he was Paid $7,000.00!).

The one day Bench Hearing in 'State Court' Was **opposite** Issues, as the **First** Claim for Damages and **First** Case **after** the Eviction., **Not** Identical. The opposite Issue is in the Bench Hearing attempting to prove that the Property was **paid in full** due to the large **Over** payments.

*The Collateral estoppel bar is **inapplicable** when the Claimant did **not** have a 'Full and Fair' opportunity to litigate the Issue decided By the Other Court.

*Petitioners' now hold evidence that could **not** have been presented at the Bench Hearing.

Currently, the overall damages to the Property And Petitioners' emotional well-being are far Greater now...this cost ten years of my (life).

- The Supreme Court also recognized, that Collateral Estoppel is inappropriate **if** facts Essential to the earlier litigated Issue have Changed.

- The Issue Preclusion or Collateral Estoppel found in the Common Law Doctrine Of Res Judicata is **not** found in **civilian** Doctrine. In addition; if all else is equal Between the two Cases, minus the Relief Sought, there will be **no** dismissal based on Res Judicata in a Civil Law Doctrine.

*The 8th Circuit Court ruled that Res Judicata did **not** preclude the 2nd Action since **Land** was involved.

*Under Common Law, Res Judicata does not merely prevent future Judgments from contradicting earlier ones, but; also prevents them from Multiplying Judgments, so a Prevailing Plaintiff could **not** recover from the Defendant **twice** for the **same** Injury.

In this case, Petitioners' did **not** receive a Penny in damages or the Property.

- The Claims in the previous case

Were (4) in total, in comparison to 14 or 15 Claims currently, the 15th being **negligence**.

*The 'State Court' erred in at least part, as only one or two Claims could be stricken from a Complaint. Or a single Claim being struck from a Complaint, or a single factual Issue being removed.

*Res Judicata does **not** restrict the Appeals Process, which is considered a linear extension of the **same** lawsuit as it travels Up and back down the Appellate Court ladder. Appeals are considered.

- *In some situations, Claim Preclusion may be avoided simply because the disposition of the **first** case did **not** provide a **resolution** of the problem.
  - *Res Judicata was used to protect **plaintiffs'** Interest in having Issues and Claims 'fully and fairly' litigated.
  - In **civil** law Jurisdiction. Collateral

Estoppel does **not** apply to an Issue which Could not have been raised in the Prior Proceedings. Petitioners' had receipts of the Homeowners' Insurances paid, however; had **No** way of knowing that 'the Bank' charged For (4) separate properties instead of the (1) Tiny Mortgage through them.

See Chern v. Bank of America (1976) 15 Cal. 3d 866, 871-72.

This is discovery of a brand new Issue error made by 'the Bank', through their Servicing., each year Petitioner did receive a (2) page document, the servicer merely did **not** lift the top page to read clearly **four** Property addresses listed! 'the Bank' did this for years, in this Case. This evidence and disclosure of such an error was not made known to the Petitioners' until February of 2007, the owner Of the Insurance Company actually searched Their Archives. , this information was Promptly filed into the Federal Court of Western Pa.

• Supreme Court also recognized that Collateral Estoppel is inappropriate **if** facts Essential to the earlier Litigated Issue have Changed.

• Was the State Court **competent** to Enter Judgment on **all** the claims.? Petitioner Was unfairly treated during the one day Bench Hearing, was badgered, interrupted and not permitted to 'speak' at times.,this was witnessed by Co-petitioner.Petitioner did request a continuance at the Courts' convenience, however; Petitioner was Immediately denied any type of postponement, even though the Court admitted that Petitioner had a Insurance Issue.,after all; 'the Banks' claim that **all** of this **over** paid amount was for an Insurance that is normally only about $200.00 annually.

• Petitioner did list two witnesses, both Credible financial experts and were also Mother-Adult daughter., incredibly; their Mother/elderly-Grandmother unexpectedly passed away and were Both in the midst of and at Services that very Day.

Compulsory Process for obtaining witnesses in His or Her favor should be favored as A fundamental feature of a Fair Trial. Petitioner is entitled to a Trial free from the Corrosion of substantial legal error.

One witness is a licensed Realtor, who did Experience paying **double** payments for one year, with a very different response from her Bank.,the other a financial expert who could analyze and explain the impact of the over-Payments and compound Interest on the Computerized amortization schedule.

*Petitioner was unable to assert **all** of the claims in the **first** suit., nor even permitted to read a portion of one paragraph from a well - known financial Author (Suzie Orman)

* Petitioner was thus, denied the Right to Compulsory process, is often secured through State Constitutional or Statutory Provisions. 97 C.J.S. Witnesses s. State Constitutions and statutes may also provide this Right to legislative or administrative Bodies conducting Hearings or Investigations. 133 N.E. 2d 104

118, F.2d All the while attempting to act as Ones' own Counsel. *See Johnson v. Zerbst (1938)*

*Petitioners' are further denied Due Process by the Order denying access to the 'State Court., is particularly, unfair to George Scheib as Co-Plaintiff who is party to this **one** case in **any** Court., from the Federal Court of Western Pa. #07-0018. *'May be based on a Civil Action Alleging a Violation of the U.S. Constitution as a Lack of Due Process.'* Thus, **a claimant can file Federal suit to Challenge the adequacy of State Procedures [Extrinsic]** Collateral Fraud; that prevents a Party from knowing about His Rights or from having a Fair opportunity of Presenting them at a Trial, or from fully Litigating at the (bench) trial or from fully Litigating at the Trial, all the Rights or Defenses that he was entitled to Assert. *468, S.W. 2d 160, 163.* It is a ground for Equitable Relief from a Judgment.

*If Res Judicata effect is given to the State Court Judgment, the Congressionally Declared Exclusivity of Federal Jurisdiction over the Federal Claim may be undermined.

Collateral Attack

For all the reasons, statements and Rules listed Petitioners' now come forth to attack the denial/ Dismissal and decision of the Courts including Claim Preclusion, Res Judicata and Collateral Estoppel., based upon procedural and or Jurisdictional Issues and based upon the Earlier Courts Lack of Authority and or Lack of Competence to Issue. There was no Hearing held in the Federal Court of Western Pa. And or in the Court of Appeals of the Third Circuit Court in Philadelphia, Pa. Any reference within This case to the one day (bench) Hearing was at GD-02-5152 in 'State Court' on July 2, 2004.

Argument of proper Jurisdiction in the Federal Court..Federal Question

3.1 Federal Courts 28 Pa. D. 2d-252 M.D. Pa. (1978) Federal District Court has both **power** and **Duty** to fashion effective Federal Remedy where Federal Law is Violated. *An Issue that the 'State Court' would not 'touch' is the fact that 'the Bank' did illegally purchase the property for costs only., **while** Co-petitioner, George Scheib was in a brief Bankruptcy protection.

Bagby v. Beal 455, 606 F. 2d 411.

We Granted Certiorari to resolve the disagreement among Court of Appeals on the meaning of s 1348 545 U.S. ____(2005)..the Provision retains "Jurisdictional parity for National Banks Vis-à-vis State Banks, Corporations" and Firstar Bank N.A. v. Faul, 253 F. 3d 982, 993-994 (CA7 2001) (same) with 388 F. 3d, at 432 (s1348 renders a National Bank a Citizen, not ***only*** *of the State in which its Main Office is Located, but...****also of every State*** *In which it has Branch Operations)". See: World Trade Center Properties, LLC v. Hartford Fire Ins. Co., 345 F. 3d 154, 161 (CA2 2003) dictum (same)*

** Wachovia Bank National Assoc. Schmidt et. al. Cert/ to the U.S. Court of Appeals for the 4th Circuit Court of Appeals for the 4th Circuit No. 04-1186 argued 11-28-05 decided January 17, 2006.*

❖ A Court has Jurisdiction to determine its Jurisdiction.

❖ Federal Court can experience discretion to Assert Pendent Jurisdiction over that Claim Since it arises from the same Common nucleus Of Operative facts.

Barnes v. Childs, D.C. Miss., 63, F.R.D. 628, 630.

All elements of Fraud are in this Case

Fraud: the intentional deception resulting in Injury To another usually consists of a Misrepresentation Concealment or nondisclosure; a material fact or at Least misleading conduct, devices or contrivance. http:www. Ojp.usdoj.gov/ovc/publica.

Fraudulent Behavior, dishonesty in any form has Always been one of the more serious Violations of The Rules of Professional Conduct (RPC) that an Attorney can commit RPC 8.4c ODC Rebert the Pa. Supreme Court held that an Attorney engages in a ***Misrepresentation*** *if He or she acts with 'reckless' Ignorance' of the Truth or a falsity of the Representation under Rebert,* ***no*** *actual knowledge or Intent to deceive on the part of the defendant is Necessary to establish a Prima Facie violation, Rebert* **8.4 RPC 8.4 c ODC. C. Rebert, Pa. Supreme Court Pursuant to unsworn falsification to Authorities. ('the Banks' Legal Team has been untruthful)**

Common Law Fraud has (5) Badges;

1. Misrepresentation of a Material Fact; 1)Partial and fabricatied Mortgage History, 8 year History

out if over 20+ years of payments.)

2. Scienter/knowledge (Mortgage Contract and actual payment due). Intention to induce action 2) A unjust eviction an illegal Break and Enter). Residential Mortgage Lender., was Liable Under Pa. Law for unlawfully gaining entry to the Debtors' Home following the (alleged) debt

3. Damages to the Party defrauded, 3) yes

4. Fraudulent Concealment 4)*Partial History

5. The obligation to reveal all details of a transaction to the Consumer. 5) Interest rate was supposed to be **fixed** by mortgage contract.

Receiving, reserving or charging must be Knowingly done. Temple Ntl. Bank v. Johnson (1916) 61 Okla. 310, 161 535 First Ntl. Bank v. Beecher (1916) 62 Okla. 36, 161 p. 327 (12) U.S.C.S. s 86, provides Civil Punishment. And Albion Ntl. Bank v. Montgomery (1898) 54 Neb. 681, 74 N.W. 1102. Fraudulent Concealment is the hiding or suppression of A material fact or circumstance which the Party is legally or morally bound to disclose.

Fundunbucks v. Michigan_Mutual Liability Co. 63 Mich. App. 405, 234 N.W. 2nd 545, 547. and In re Fricker, Bkrtcy. E.D. Pa. 1990 115 B.R 809.

Pennsylvania as an Intermediate Theory State

Mortgagor/Petitioners' remain the Owner of The Land. Petitioners' assert deprivation of Significant Life, Liberty, and or Property Interest has occurred. See: *Bivens v. Six Unknown Named Agents, 403 U.S. 388, 396-97, 91 S. Ct. 1999, 2004-05 (1971).*

Unfair Trade Practices

Petitioners' did submit new evidence within The Federal Court, with a brand-new Issue, (Insurance) new information and a different result should have occurred. In order for (Borrower) to succeed in Unfair Trade Practices Claim, Under this chapter or Federal Law, that lender ('the Bank') misrepresented Insurance (force-placed Homeowners') as being Compulsory, (Borrower) must show that Lender ('the Bank') affirmatively represented by words

Or by conduct.('the Bank'); charged the much Higher rate directly for an Insurance that is Typically for a flood-prone or tumultuous area., Through their Servicing, as though that type of Insurance was in fact, required; and that as a result of Lenders' Actions, borrower did purchase Insurance coverage that it is likely that he or she would **not** have purchased.

In re Milbourne, Bkrtcy. E.D.Pa. 1989, 108 B.R. 522. and Under Violation of Federal Truth-In-Lending Act 15 U.S.C.A. s 1601 et.seq. 'In 1995, 'the Bank' did settle in a Class Action suit for the **same** type of *Claim: see: *DeBoer v. Mellon Mortgage 64 F. 32d 1171 (8th Cir. Ct. 1995).* In **servicing** requirements and in established **law** to hold no more than (2) months of escrow. That's a **federal** Law, a (H.U.D.), Housing Urban Development **settlement** Agreement, was Sept. 30, 1999 (mere months After the eviction of this case., in February; And 'the Bank' **sold** their residential Mortgages to Chase Manhattan Bank, April of 1999. Petitioners' were possibly.....

Their last eviction.(H.U.D.) established New Rules with a class action settlement and New law in their servicing accounts, effective May 24, 1995., that all Mortgage Lenders To use a method called aggregate accounting *the over-payments in this case started in 1992. *On August 10, 1992..a Judge says., "we won a Judgment as high as $100,000,000 whereby Judge Marvin Katz found and stated, "This case is a Clarion call to Banks all over to reform their egregious practices that have long Victimized their Customers and others who have to deal with these Institutions." Quote of Honorable Judge Katz In: U.S. District Court for Eastern Pa. John B.Upp v. **Mellon** Bank, Civil Action Number 91-5229.* In a Class Action suit.

S48.3 Dishonest, fraudulent, illegal, Unfair, Unethical, negligent, Incompetent practices or Conduct in the first mortgage loan business Business. FDIC Law Under s 343.30 Prohibited practices re: Force-Placed Insurance. The purchase of an Insurance product or

annuity. From the Bank or any of its affiliates; or Insurance Product or Annuity from an Unaffiliated entity. Violations of Title XXV Banking Law enforcement.

Counts in Federal Court of Western Pa.

1. Jurisdiction
2. Civil Conspiracy, the conduct constituted A common Law Conspiracy.
3. Trespassing, defamation, slander and Libel.
4. Fraud, Unfair and Deceptive Practices, The scheme to extract Unlawful fees was Predicated on false representations upon Which Petitioners' presumptively relied. (Homeowners' Insurance).

*The tort of Fraudulent Deceit..the elements of actionable deceit are: a False representation of a material fact made with knowledge of its falsity, or recklessly, or without reasonable grounds for believing its truth, and with intent to induce reliance theron. Fraud by accounting. Fraudulent concealment of the Impact of the over

payments and the Insurance Issue, including triple-dipping (Insurance) over-escrowing, and overages, excessive escrow deposits. And **no** notification of a new servicer from 'the Bank' to Mellon Mortgage Co., in Colorado and back again.

*In correspondence from the Federal Trade Commission it reads...the Commission has Been directed by Congress to enforce the Federal Trade Commission Act, 15 U.S.C. 41-58. In interpreting Section 5 of that Statut 15 U.S.C. 45 which Prohibits Unfair or Deceptive acts or practices, the Commission Has determined that a Representation, an Omission, or Practice is deceptive, if 1.) It is Likely to mislead Consumers acting Reasonably under the circumstances; and 2) It is material: that is likely to affect Consumers' conduct or decisions with respect To the product (service) at issue.

In a statute that became effective in August 1994, Congress amended Section 5 of the FTC Act to provide that an act or Practice is

Unfair if the Injury to Consumers it causes Or is likely to cause 1) is substantial 2) is not Outweighed by countervailing benefits to Consumers or to competition; and 3) is not Reasonably avoidable by Consumers them Selves. And Mortgage Fraud.

5. Punitive and Compensatory damages. Intentional recklessness with (Malice,)the cruel Eviction one day after the 2 to 3 minute Emergency Hearing., with the quest..."How much do we owe???" Can we pay the Court?

6. Unjust Enrichment (Money-had-and-received Claim to add). Constructive eviction and the Defense of paying the mortgage amount as Per the coupon amounts. 'the Bank' was Unjustly enriched by knowingly accepting And retaining the monetary benefits of the Unlawful conduct.

7. Intentional Infliction of emotional distress. Petitioners' endure the ongoing concerns of 'the Bank' continuing to attempt to sell the property., even while in litigation and during the almost two year period before the one'

Day Bench Hearing. Prospective buyers would Call with disturbing slanderous messages. The emotional stresses of the attempt(s) at resolving these Issues, the overwhelming paperwork, research, expense working out of the local 'Kinkos' causing Health concerns to Petitioners'., combined with living in the Inner City and the public school system.

8. Gross Negligence/ Negligence

9. Full Faith and Credit

10. Diminished value of Property (since 2004, The property has not had the minimal Maintenance, there is and has been over-grown Weeds 4' to 5' tall, doors are left wide open, There are broken windows, and graffiti through The house.

11. To add Conversion and that (the payments Of the mentioned fees under Homeowners' Insurance,) deprived Petitioners' the Right in Property, resulting in a common Law Conversion Claim.

12. To add Adverse Possession. (In comparison To just a few Claims in the 'State Court'.

Which were: Fraud, misrepresentation, Breach of Fiduciary duty and trespassing) Fraud and Trespassing were not described in the proper legal form, misrepresentation was pertaining to a Material fact being a Partial mortgage history lacking 13 years of over (20+) years

13. To add Conversion, that the payments of the mentioned fees of the Homeowners' Insurance, **deprived** Petitioners' the Right In Property, resulting in a common Law Conversion Claim.

14. To add Adverse Possession.

Trespassing:

The Home is a typical 47' split entry, Ryan Home (an economical Construction Co., in The area)., there is only 1 &1/2' on each side. Petitioners' and two sons, own the adjacent Lot, 'the Bank' was informed of this by letter **Before** the hasty eviction,'the Bank' did not Survey the property until **after** the eviction. 'the Bank' and their Agents are continually trespassing (showing the home **before** all of Petitioners' possessions were even removed.

The rear garages were built separately, several Years ago, by; Co-Petitioner and are Land-locked The ongoing trespass is **outside** of the property as well as, **inside**; a similar scenario to this case is In.,Re:Rodriguez 218 B.R. 764, E.D. Bkr.(1998)

Summary of Argument (Negligence)

Petitioners' assert that 'the Bank' had duty to them Through a Mortgage Contract., ***Isn't this the Issue that our President is asserting with the Housing Industry currently??**

The Constitutional Right to a **jury** Trial on **fact** Questions: has established overwhelmingly at least In the U.S, that the determination of whether the Behavior of a particular defendant in any given Case constitutes **negligence**. Negligence is Ordinarily a unique question of **fact** for a **jury** To determine. Claim by Petitioners' is that 'the Bank' has breached that duty by **not** exercising Reasonable care., stemming from servicing errors. Claim by Petitioners' is that it was 'the Banks' **Negligence** that contributed to cause Harm to Them, and the **negligence** was a 'proximate cause' Of the Harm. Further, Petitioners' had to endure

Years of ongoing Emotional stresses by not only Being out of the 'homestead'., but; by the actions Of 'the Bank', through their agents and employees, Who stated., as an example., "No one told me that We **can't** sell the house...while its' in Litigation... And incredibly while it was in **discovery** phase. The unbelievable trauma of being evicted in the 'dead' of winter, while over 20 years of possessions were literally 'thrown' into storage. Every Rule in the Allegheny County blue rule book was broken, (eviction process), in this case. The eviction was also Illegal in that 'the Bank' did **not** even have sufficient movers and trucks to remove everything in **one** day. In **discovery**,Petitioners' had only **one** request..was to view the property (inside) however; 'the Banks' Lawyer did allow the request., in his presence; and Petitioners' hold photos from then that are very depressing. Petitioner was unable to conduct **any** depositions during that time, for the financial reasons., **no** Office, court reporter, etc. Property should be considered to be **abandoned** By 'the Bank'.

When a Mortgagee goes into Possession, he does not

Become the **owner** *of the real estate. Rather, he Becomes a Quan Trustee, managing the property For the benefit of the Mortgagee, but; at the same Time protecting His Interest. Zisman v. City of Duquesne 143, Pa. Super. 263, 18 A.2d 95 (1941).*

...It was the foreclosure action of "the Bank' that did **push** the Petitioners' into a Chapter 13 for **protection** but; instead was **involuntarily** placed into Chapter 7, Co-Petitioner, George Scheib who retained an Attorney was directly thrust right in to Chapter 7 (liquidation) even though, Petitioners **had** substantial assets. **No** Attorney was present nor there was **no** Hearing. Petitioners' had **no** Credit cards or any car loans. Mortgages were All tiny, the **original** mortgage on each property (4) were **all** under $29,000.and paid into over (20)years; to then lose all (3) Brick homes, all in a good school district and all in the Borough of Crafton. Petitioners' should have been allowed to be in Chapter 13, and given a little time to pay mortgages, after all; it was solely due to the Port Authority 'busway' and construction 33' from The small business that effected the business in A negative way.

In the United States Supreme Court

Prayer for Relief Letter:

Based upon the Petition and Title III of the Constitution...Petitioners pray that this Court Issue Equitable relief as follows: to Grant the Certiorari to give a final remedy to this Claim; By Mandamus, a Trial by Petit Jury, an Order For the appropriate Court; if that is the Court of Common Pleas of Allegheny County (State Court) To remove the Un-Constitutional 'barring' of the Petitioners' from that Court. To Issue declaratory Relief and any other Relief that this Court deems Appropriate and Just. To Issue Injunctive relief Commanding the 'respondent/defendant' to return The 'homestead' and whatever Proper Redress to The Injury.

_____

By the Court

_____,200 .

IN THE SUPREME COURT OF THE

UNITED STATES

For the reasons set forth within this Petition Petitioners', George Scheib and Carole Scheib Does Pray that this Honorable Court Grant Petition for an Extraordinary Writ of Certiorari.

In Utmost Respect,

George Scheib X George Scheib

Carole L. Scheib Carole L. Scheib

Dated and submitted timely on May 7, 2008.

92

Supreme Court, U.S.
FILED
071399 MAR 3 - 2008
OFFICE OF THE CLERK

No. ____

In the Supreme Court of the United States

APPENDIX

George Scheib and Carole L. Scheib

Petitioners'

v.

Mellon Bank, N.A. and Reed J. Davis, Sr.

Respondents'

On Petition for Extraordinary Writ of Certiorari to the Third Circuit Court of Appeals of Philadelphia, Pennsylvania

Respectfully submitted by,
George Scheib and Carole L. Scheib, ***pro-se***
815 Walbridge Street, Pittsburgh, PA 15220
(412) 875-2439 or (412) 923-3350

Appendix

>Order of denial of timely Petition for Re/Hearing in the United States Court of Appeals on December 7, 2007., #07-3435 and does appear at Appendix.....A

rehearing

> Order of Third Circuit Court of Philadelphia, PA on November 7, 2007. #07-0018 and does appear at Appendix ..... B

reconsideration

>Order of Federal Court of Western Pa. On July 19, 2007. #07-0018 and does appear at Appendix.....C

reconsideration

>Order of Federal Court of Western Pa. on June 28, 2007, #07-0018 and does appear at Appendix.....D

reconsideration

> Order of Federal Court of Western Pa. and Opinion on June 13, 2007. #07-0018 and does Appear at Appendix.....E

United States Court of Appeals for the Third Curcuit

No. 07-3435

George Scheib, Carole L. Scheib

Appellants

v.

Mellon Bank, N.A., Reed J. Davis, Sr.

On Appeal from the United States District Court For the Western District of Pennsylvania (D.C. Civil No. 07-cv-0018)

Present SCIRICA, Chief Judge, SLOVITER, McKEE, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, And VAN ANTWERPEN,* Circuit Judges

---

SUR PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING EN BANC

Appendix A

The petition for rehearing filed by Pro se Appellants having been submitted to the Judges Who participated in the Decision of this Court, And no Judge who concurred in this decision Having asked for Rehearing, the Petition for Rehearing is DENIED.

BY THE COURT

/S/ Maryanne Trump Barry

Circuit Judge

The Honorable Franklin S.Van Antwerpen is Limited To panel vote only.

Dated: December 7, 2007

Tmm/cc: Carole L. Scheib
George Scheib
Jayme L. Butcher, Esq.
Sharon L. Rusnak, Esq.

Appendix A

DLD-17 October 18, 2007.

United States Court of Appeals for the Third Circuit

C.A. No. 07-3435

George Scheib, Carole L. Scheib

Appellants

v.

Mellon Bank, N.A. Reed J. Davis, Sr.

(W.D.Pa. Civ. No. 07-00018)

Present:BARRY, CHAGARES, And VAN ANTWERPEN, Circuit Judges

Submitted are:

(1) By the Clerk for possible dismissal due to Lack of Jurisdiction;

(2) Appellants' Jurisdictional statement; And

(3) Appellees' Jurisdictional statement

In the above-captioned case.

Respectfully,

Clerk

MMW/CAC/ww/smw

ORDER

The foregoing appeal is dismissed because Appellants' notice of appeal was untimely. A Notice of appeal in a civil case such as this

Must be filed within 30 days of the entry of the Order appealed from. See Fed. R. App. P. 4 (a) (1) (A). Because Appellants filed a timely motion for Reconsideration, the time for filing a Notice of Appeal did not begin to run until the District Court entered an order on June 28, 2007,denying the motion. See Fed. R. App. P. 4 (a) (4) (A). Appellants second and third motions for Reconsideration did not extend the time in which to file a timely notice of appeal. See Turner v. Evers, 726 F. 2d 112,114 (3rd Cir. 1984) Therefore Appellants had 30 days from June 28, 2007, or until July 30, 2007, to file a notice of appeal. Appellants, however, did not file their Notice of Appeal until August 14, 2007. Therefore, the Notice of appeal was Untimely.

By the Court,

/s/ Maryanne Trump Barry

Circuit Judge

Dated: November 2, 2007.

Appendix B

Smw/cc: Carole L. Scheib George Scheib
Jayme L. Butcher, Esq.
Sharon L. Rusnak, Esq.

Certified as a true copy of a formal Mandate on December 17, 2007. Teste: Marcia M. Waldron
Clerk, U.S. Court of Appeals for the Third Circuit

Appendix B

Case 2:07-cv-00018-TFM Document 33 Filed 7/19/07 Page 1 of 2

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

02:07cv 0018

George Scheib and Carole L. Scheib

Plaintiffs

v.

Mellon Bank, N.A. and Reed J. Davis, Sr,

Defendants

MEMORANDUM ORDER OF COURT

Presently pending before the Court for Disposition is the pro se SECOND MOTION TO THE HONORABLE COURT TO OPEN AND RECONSIDER DECISION AND/OR AS AN ALTERNATIVE, MOTION TO SET ASIDE JUDGMENT filed by Plaintiffs, George Scheib And Carole L. Scheib (Document No. 32). Plaintiffs again ask the Court for Reconsideration of the Memorandum Opinion and Order of Cou entered June 13, 2007,In which the Court Granted the Motion to Dismiss filed By Defendants.

Appendix C

By Memorandum Order of Court filed June 28, 2007, the Court denied Plaintiff's first request for Reconsideration.Approximately eleven(11)days after The Order denying the motion for request for Reconsideration was filed, Plaintiffs filed the Instant Motion. For the reasons set forth in the Courts' Previous Order of June 28, 2007.The instant motion Is DENIED. As before, Plaintiffs do not argue that there has been an intervening change in controlling Law: that new evidence has become available; or that Reconsideration is necessary to correct a clear error of law or to prevent manifest injustice.

Document 33 Page 2 of 2

So ORDERED this 19th day of July, 2007

BY THE COURT

S/ Terrence F. McVerry

---

cc: George Scheib and Carole L. Scheib
815 Walbridge Street, Pittsburgh, Pa. 15220
Jayme L. Butcher, Esquire
Email:jbutcher@reedsmith.com

Appendix C

Case 2:07-cv-00018-TFM Document 31 Filed 6/28/07 Page 1 of 2

IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF PENNSYLVANIA

02:07cv0018

George Scheib and Carole L. Scheib

Plaintiffs

v.

Mellon Bank, N.A. and Reed J. Davis, Sr.

Defendants

MEMORANDUM ORDER OF COURT

Presently pending before the Court for Disposition is the pro se MOTION TO THE HONORABLE COURT TO OPEN AND TO RECONSIDER DECISION AND/OR AS AN ALTERNATIVE/ MOTION TO SET ASIDE JUDGMENT filed by Plaintiffs, George Scheib And Carole L. Scheib (Document No. 29). Plaintiffs ask the Court for reconsideration of th Memorandum Opinion and Order of Court enter June 13, 2007, in which the Court Granted the Motion to Dismiss filed by Defendants.

Appendix D

Generally a motion for Reconsideration will only Be granted if (1) there has been an intervening Change in controlling law; (2) new evidence which was not previously available, has become available or (3) necessary to correct a clear error of law or to prevent manifest injustice. *Hirsch Corp.v. Zlotnicki, 779 F. 2d 906, 909 (3d Cir. 1985, cert. Denied, 47 U.S. 1171 (1986).*

Plaintiffs do not argue that there has been an Intervening change in controlling law; that new Evidence has become available; or that Reconsideration is necessary to correct a clear Error of Law or to prevent manifest injustice.

Although Plaintiffs have today submitted a filing Which they characterize as "EVIDENCE IN SUPPORT OF MOTION TO OPEN/RE-CONSIDER AND/OR SET ASIDE JUDGMENT" (Document No. 30) It is neither new, relevant nor of any substantive meaning to the issue(s) at hand. Rather, Plaintiffs continue to advance the same Arguments they made in their response to the Motion to dismiss.

Appendix D

And said arguments were previously given due Due consideration and rejected by this Court. Therefore, the Court finds that the Arguments Raised in the instant motion do not warrant Further analytical discussion. Fatal to the Pending motion, nothing new has been Supplemented to the Record by the Motion for Reconsideration of the Memorandum Opinion and Order of June 13, 2007.

AND NOW, this 28th day of June, 2007 It is Hereby ORDERED, ADJUDGED, AND DECREED That the MOTION to the HONORABLE COURT TO OPEN AND RECONSIDER DECISION AND/ OR AS AN ALTERNATIVE/MOTION TO SET ASIDE JUDGMENT filed by Plaintiffs is hereby DENIED.

BY THE COURT:

S/Terrence F. McVerry

United States District Court Judge

Appendix D

Case 2:07-cv-00018-TFM Document 28 Filed 6/13/07 Page 1 of 11

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PA.

02:07cv 0018

George Scheib and Carole L. Scheib

Plaintiffs

v.

Mellon Bank, N.A. and Reed J. Davis, Sr.

Defendants

MEMORANDUM OPINION AND ORDER

June 13, 2007

Presently before the Court is the MOTION TO DISMISS PLAINTIFFS' COMPLAINT, with Brief in support filed by Defendants (Document Nos. 3 and 4, Respectively), the response in Opposition filed by Plaintiffs' (Document No. 5) and The Reply Brief filed Defendants (Document No.8) For the reasons that follow, the Motion to Dismiss Will be granted.

Standard of Review When considering a Motion to dismiss the court accepts as true all Well pleaded allegations of fact.

Pennsylvania Nurses Ass'n v. Pennsylvania State Educ. Assn. 90 F. 3d, 797. 799-800(3d. . 1996). Cert. Denied, 519,U.S. 11110 (1997). In Addition, The Court construes all reasonable Inferences from Those allegations in a light most favorable to the Plaintiff. Id. The Complaint will be dismissed only If there is "no set of facts' which would entitle the Plaintiff to relief. *Conley v. Gibson, 355* U.S. 41, 45-46 (1957). The Federal Rules of Civil Procedure do not require detailed pleading of the Facts on which a claim is based, they simply Require a 'short and plain statement of the Claim showing...Page 2 of 11 that the pleader Is entitled to relief," enough to "give the Defendant fair notice of what the plaintiffs' claim Is and the grounds upon which it rests." See Fed. R.Civ. P 8 (a) (2); *see also Conley,* 355 U.S. at 47.

Generally, "to the extent that [a] Court Considers evidence beyond the Complaint in Deciding a 12 (b) (6) Motion, it is converted to a Motion for summary judgment." *Anjelino v. New York Times Co., 200* F. 3d 73, 88 (3d Cir. 1999).

However, in resolving a 12 (b) (6) motion to Dismiss, a court may look beyond the complaint To matters of public record, including court files And records, and documents referenced in the Complaint or essential to a plaintiff's claim Which are attached to a defendants' motion. *Pension Benefit Guar. Corp. 998* F. 2d at 1196-97. Background As the law requires, all disputed Facts and inferences are resolved most favorable To Plaintiff. The following background is drawn From the Complaint and the factual allegations Therein are accepted as true for the purpose of This opinion.

In 1978, Mellon Bank, N.A. issues Plaintiffs A mortgage for a personal residence located in Crafton Borough, Allegheny County, Pa. In 1998, Mellon Bank, N.A. obtained a default judgment in A foreclosure action against Plaintiffs and Purchased their property at a Sheriffs' Sale. Document 28 Page 3 of 11 Through a Subsequent action. Mellon Bank, N.A. evicted The Plaintiffs from the property on February 11 1999, and has been in possession of the property

Since that time. Defendant, Reed Davis, Sr. an Attorney, represented Mellon Bank, N.A. in the Foreclosure and eviction proceedings.

Since 1999, Plaintiffs, pro se, have Filed Numerous lawsuits and complaints against Defendants in State and Federal Court, all of Which have been unsuccessful in attempting to Collaterally attack the Judgment in the foreclosure Action. In Fact, since 1999, Plaintiffs have Attempted to challenge the validity of the Foreclosure and eviction more than ten times in At least four different courts, i.e. the United States Bankruptcy Court for the Western District of Pennsylvania, the Court of Common Pleas of Allegheny County, Pennsylvania. The Pennsylvania Superior Court, and the Pennsylvania Supreme Court. All of Plaintiff's previous legal actions have Been dismissed and/or declared frivolous by the Courts.

In the instant complaint Plaintiffs once again Attempt to challenge the validity of the foreclosure And eviction.

Plaintiffs' aver that "[the] latest denial of writ of certiorari was received on Dec. 3, 2006., on appeal from the Supreme Court of Washington, D.C. due to new evidence was not available to Plaintiff prior to 2002, plaintiff desires to include within this case under Exhibits to further clarify Case and position.,proving due to the ongoing over-payments that the property was paid in full." Complaint at 7 and 8. 07-0018 Page 4 of 11 Discussion

A. *Lack of Subject Matter Jurisdiction*

In their Complaint, Plaintiffs' state that this Court has jurisdiction pursuant to 28 U.S.C.s 1334 (sic) and s 1332 (a) Title 28, United States Code, section 1334 provides that a district court "shall have original and exclusive jurisdiction of all cases under Title 11" of the Bankruptcy code. Clearly, this provision does not apply to the Instant case because this lawsuit was not brought Under Title 11. However, in an abundance of Caution, the Court will consider whether this Court has Federal Question jurisdiction pursuant To 28 U.S.C. s 1331.

Federal question jurisdiction exists over a civil Action if the claim arises under the Constitution, Laws or treaties of the United States. Despite the Court's difficulty in discerning the legal basis for Plaintiffs' claims, it is clear that the essence of Their claims involve the foreclosure and eviction Which have been the subject of numerous lawsuits. In fact, paragraph 8 of the Complaint states as Follows: Due to new evidence that was not Available prior to 2002, plaintiff desires to include Within this case under Exhibits, to further clarify Case and position., proving due to the ongoing Over-payments, that the property was paid in full. Complaint, paragraph 8, emphasis added. Even after A close reading of Plaintiffs' Complaint, the Court Is not able to discern any federal question which Is being raised by Plaintiffs. Accordingly, the Court Finds and rules that it lacks jurisdiction pursuant To 28 U.S.C. s 1331.

District courts maintain subject matter Jurisdiction based on diversity where "the matter In controversy exceeds the sum of or value of $75,000.00.

Exclusive of interest and costs, and is between Citizens of different states." 28 U.S.C. s 1332. For The purpose of establishing...Page 4 of 11 Diversity jurisdiction, a corporation is considered a Citizen of both its principal place of business and Of its place of Incorporation. 28 U.S.C. s 1332 © (1)

In the case sub judice, the Complaint reflects That all parties are Pennsylvania citizens. Plaintiffs Reside in Pittsburgh, Pennsylvania. Complaint at II 1. Mellon Bank, N.A. "is a national Corporation with main headquarters, within the city of Pittsburgh, Pa.."Id at II 2. Defendant Reed J. Davis, Sr., " Practices Law at Davis-Davis, 250 Vanadium Road, Pittsburgh, Pa. 15228." Id at II 3. Accordingly, the Court finds and rules that it does not have Jurisdiction pursuant to 28 U.S.C. s 1332 (a).

For all these reasons, the Court finds and Rules that neither federal question jurisdiction Nor diversity jurisdiction exist in this action and The complaint will be dismissed.

B. *Claim and Issue Preclusion* Defendants argue That Plaintiffs' claims are precluded by the

Doctrines of (i) Claim preclusion or *res judicata* And/or (ii) issue preclusion or collateral estoppel. The Court agrees.

The defense of claim preclusion requires a Defendant to demonstrate that there has been (i) a final judgment on the merits in a prior suit involving (ii) the same parties or their privies and (iii) a subsequent suit based on the same cause of action.*United States v. Athlone Indus., Inc,* 746 F. 2d 977, 983 (3d Cir. 1984) (citations omitted). If these three factors are present, a claim that was or could have been raised previously must be dismissed as precluded. *Corestates Bank, N.A. v. Huls America, Inc.,* 176 F. 3d 187, 194 (3d Cir. 1999(citations omitted). Case 07-0018 page 6 of 11

Similarly, the defense of issue preclusion requires (i)the issue decided in the prior adjudication must be identical with the one presented in the later action; (ii) there must have been a final judgment on the merits; (iii) the party against whom collateral estoppel is asserted must have been a party or in privity with the party to the prior adjudication; and (iv) the party against whom

Collateral estoppel is asserted must have had a Full and fair opportunity to litigate the issue in Question in the prior adjudication.

On the face of Plaintiff's Complaint, it is Clear that the claims alleged in this action are The same claims and issues which have been Litigated on prior occasions. Moreover, a review of The record establishes that both Mellon Bank,N.A., And Reed Davis, Sr., were parties to previous Suits brought by these Plaintiffs which involved The same claims and issues i.e., that the Foreclosure and eviction were unlawful.

These same claims and issues were most Recently decided by Judge Timothy Patrick O'Reilley in Scheib v. Mellon Bank, N.A., Reed J. Davis, Sr. and Davis-Davis Law Firm, filed In the Court of Common Pleas of Allegheny County, Pennsylvania at GD-02-5152. In that Case, Plaintiffs' brought claims for fraud, Misrepresentation, negligent breach of fiduciary Duty, and trespass against defendants all of Which related to the foreclosure and eviction.

Judge O'Reilley found that the claims were Barred by collateral estoppel because all of the Claims in the complaint had been judicially Determined in the prior foreclosure and ejectment Action.

As moted *supra,* Plaintiffs' foreclosure and Eviction have been the subject of repeated Litigation. The Court finds and rules that the Instant complaint is yet another attempt to Relitigate these same claims and issues. Accordingly, Plaintiffs' claims are barred by the Doctrines of claim and issue preclusion and Plaintiffs', complaint will be dismissed.

Page 7 of 11 *C. Claims against Reed J. Davis, Sr.*

In addition to Plaintiffs' claims against Reed J. Davis, Sr., being dismissed for lack of subject Matter jurisdiction and pursuant to the doctrines Of res judicata and collateral estoppel. The claims Against Defendant Davis must also be dismissed As a matter of law for the additional reason that Defendant Davis had no duty to Plaintiffs'.The parties Who were adverse to his client in litigation. As the Pennsylvania Superior Court aptly noted:

To impose upon an attorney a duty of care to The adverse party would place the attorney in a Position where his own interest would conflict With the interests of his client and prevent him From exerting a maximum effort on behalf of his Client. It would place an undue burden on the Profession and would diminish the quality of the Legal services rendered to and received by the Client. Where an attorney represents a client in Litigation...the public interest demands that Attorneys in the proper exercise of their Functions as such, not to be liable to adverse Parties for acts performed in good faith and for The honest purpose of protecting the interests of Their clients.

Aetna Electroplating C., Inc. v. Jenkins, 484 A.2d 134, 137 (Pa. Super. 1984).

B. *Leave to Amend*

If a complaint is subject to Rule 12 (b) (6) Dismissal. A district court must permit a Curative amendment unless an amendment would Be inequitable or futile.

Alston v. Parker, 363 F. 3d 229, 235 (3d Cir. 2004). A district court must provide the plaintiff with this opportunity even if the plaintiff does not seek leave to amend. Id. Even if a plaintiff does not seek leave to amend the complaint after the defendant moves for dismissal, unless the district court finds that amendment would be inequitable or futile, the Court must inform the plaintiff that he or she has leave to amend the complaint within a set period of time.*See Grayson v. Mayview State Hosp., 292 F. 3d 102 (3d Cir.2002)* The district court may dismiss the action if the Plaintiff does not ..Page 8 of 11 file an amended Complaint within that time, or if the plaintiff files A notice for her intent to stand on the complaint.

The Court finds and rules that it would be Futile to allow Plaintiffs' to amend their complaint In this matter. Plaintiffs' claims in the present Action share a common nucleus of operative facts, Claims, and issues with their prior suits, which Have been fully litigated, and are therefore Barred by both issue and claim preclusion; an Amended complaint could not alter this legal Conclusion. Appendix E-12

C. *Request to have Plaintiffs' declared Vexatious Litigators*

Finally, the Court must address the request Of defendants to enjoin Plaintiffs' form access to Federal Court in the Western District of Pa. Unless Represented by counsel. Defendants argue that there Is ample evidence in the record to demonstrate That Plaintiffs are 'vexatious litigants.' Title 28, United States Code, section 1927 provides that [a]ny Attorney or other person admitted to conduct cases In any court of the United States...who so Multiplies the proceedings in any case unreasonably And vexatiously may be required by the Court to Satisfy personally the excess Costs, expenses, and Attorneys' fees reasonably incurred because of such Conduct."

Our appellate court has long recognized that a pre-filing injunction is an extreme remedy which Must be 'narrowly tailored and sparingly used.' *Gonzalez v. Feiner,* 131 Fed. Appx. 373, 378 (3d Cir. 2005) (citations omitted). Sufficient notice and Opportunity to be heard are essential prerequisites To the entry of a pre-filing injunction. *See In re Oliver,*

682 F.2d 443, 445-446 (3d Cir. 1982) page 9 of 11

While the Court recognizes that Plaintiffs' have Filed repeated lawsuits all of which stem from the Same set of factual occurrences, the Court does not Find that Plaintiffs' have yet abused the Federal Court system in a manner that would warrant Such an extreme remedy. Therefore, Defendants' Request will be denied. However, Plaintiffs' are Warned that the denial of the request for Injunctive relief is NOT an invitation to continue To file lawsuits against these same defendants Which arise out of these same facts.

Conclusion

For the reasons hereinabove stated, the Court Finds that the motion to dismiss filed by Defendants should be Granted. Accordingly, Plaintiffs' complaint will be dismissed with Prejudice. An appropriate Order follows.

McVerry, J.

Filed 6/13/07 Page 10 of 11

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PA.

Appendix E-14

02:07cv0018

George Scheib and Carole L. Scheib

Plaintiffs

v.

Mellon Bank, N.A. and Reed J. Davis, Sr.

Defendants

ORDER OF COURT

AND NOW, this 13th day of June, 2007 In Accordance with the foregoing Memorandum Opinion, it is hereby ORDERED, ADJUDGED And DECREED That the Motion to Dismiss Plaintiffs' complaint filed by Defendants is GRANTED and Plaintiffs' Complaint Is DISMISSED WITH PREJUDICE.

It is further ORDERED that each of the Following Motions filed by Plaintiffs' are DENIED AS MOOT:

*Motion to Add Party Defendant (Mellon Mortgage) (Document No. 6);

*Motion to Add or In the Alternative to Amend Plaintiffs' Opposition Brief (Document No. 10)

*Motion for a Full Federal and State Regulatory Investigation (Document No. 11;) and

02:07cv0018

George Scheib and Carole L. Scheib

Plaintiffs

v.

Mellon Bank, N.A. and Reed J. Davis, Sr.

Defendants

ORDER OF COURT

AND NOW, this 13th day of June, 2007 In Accordance with the foregoing Memorandum Opinion, it is hereby ORDERED, ADJUDGED And DECREED That the Motion to Dismiss Plaintiffs' complaint filed by Defendants is GRANTED and Plaintiffs' Complaint Is DISMISSED WITH PREJUDICE.

It is further ORDERED that each of the Following Motions filed by Plaintiffs' are DENIED AS MOOT:

*Motion to Add Party Defendant (Mellon Mortgage) (Document No. 6);

*Motion to Add or In the Alternative to Amend Plaintiffs' Opposition Brief (Document No. 10)

*Motion for a Full Federal and State Regulatory Investigation (Document No. 11;) and

*Motion to Grant Re-Possession of Real Property (Document No. 22)

Page 11 of 11 The Clerk shall docket this case As Closed. End of Page 11 of 11

BY THE COURT /s/ Terrence F. McVerry

United States District Court

Cc: George Scheib and Carole L. Scheib

815 Walbridge Street Pittsburgh, Pa. 15220

Jayme L. Butcher, Esquire Reed Smith Email:

MIME-Version:1.0

From: gov To:pawd-ecf@pawd.uscourts.gov

Bcc:jbutcher@reedsmith.com,tfm-pawd

Gov, Message-Id: Subject:Activity in Case 2:07-cv 00018-TFM Scheib et al v. MELLON BANK, NA et al Order on Motion to Dismiss Content-Type: text/html Notice of Electronic Filing the following transaction was entered on 6/13/07 at 1:32 PM EDT and filed on 6/13/07 Case Name: SCHEIB et.al.v. MELLON BANK,NA et.al. Case Number 2:07-cv-18 WARNING:CASE CLOSED on 6/13/07 Document Number 28.

Appendix E-16

Docket text: MEMORANDUM OPINION AND ORDER Granting [3] Motion to Dismiss; denying As Moot[6] Motion to add Party Defendant; Denying as moot [11] Motion for a full Federal And State Regulatory Investigation; and denying As moot [22] Motion to Grant Re-possession of Real Property. See Memorandum Opinion for Details. The Clerk shall docket this case as Closed. Signed by Judge Terrence F.McVerry on 6/13/07. (bsc) 2:07-cv-18 Notice has been electronically mailed to :Jayme L. Butcherjbutcher @reedsmith.com 2:07-cv-18 Notice has been delivered by other means to: Carole L. Scheib and George Scheib, 815 Walbridge St., Pgh. Pa.15220 The following document(s) are associated with this Transaction: Document description: Main Document Original filename n/a Electronic document Stamp: [STAMP dcecfStamp-ID=1098469114 [Date=6/13/07 File Number=946793-0][74a17fbd4126eba49c4d3961 03fc9b6885947c78dfe587ef8da260ad0b3bd1674f6fe9 374b5e4195a97a75112873fc3ba62c0b4a6fa8fd59bc3964 dc9531b750]]